

STATE OF INDIANA) IN THE MARION CIRCUIT/SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO. ~~490040705P L019838~~

STATE OF INDIANA,)
)
 Plaintiff,)
)
 v.)
)
A-ABLE CONSTRUCTION, LLC,)
)
 Defendant.)

(49) FILED
MAY 18 2007
Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

CONSENT JUDGMENT

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, and the Defendant, A-Able Construction, LLC, hereby agree to entry of a Consent Judgment without trial or adjudication of any issue of fact or law herein.

The parties believe it is in their best interest to resolve the issues raised by the State of Indiana and avoid further litigation. This Consent Judgment does not constitute an admission by the Defendant of any wrongdoing, nor shall it be construed as abandonment by the Attorney General of his position the Defendant violated Indiana's Deceptive Consumer Sales Act and the Home Improvement Contract Act. The parties consent to entry of a final judgment in this proceeding by the Court and accept this Consent Judgment as final on the issues resolved herein.

JURISDICTION, SCOPE OF JUDGMENT, AND ACKNOWLEDGMENTS

1. This Court has jurisdiction and venue over the subject matter of this action and the parties hereto.

2. The State of Indiana's Complaint for Injunction, Restitution, Costs, and Civil Penalties, states a cause of action pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, and the Indiana Home Improvement Contracts Act, Indiana Code § 24-5-11-1, *et seq.*

3. The Defendant, A-Able Construction, LLC, is a domestic limited liability company engaged in the home improvement business from its principal place of business in Marion County, located at 2511 East 46th Street, Suite C-5, Indianapolis, Indiana, 46205.

RELIEF ORDERED

4. The Defendant is permanently enjoined from engaging in the following acts and making, causing to be made, or permitting to be made the following representations:

- a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:
 - i. The name of the consumer and the address of the residential property that is the subject of the home improvement;

- ii. The name and address of the Defendant and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- iii. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- iv. A reasonably detailed description of the proposed home improvements;
- v. If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- vi. The approximate starting and completion date of the home improvements;
- vii. A statement of any contingencies that would materially change the approximate completion date;
- viii. The home improvement contract price; and
- ix. Signature lines for the Defendant or the Defendant's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed

version of that person's name placed directly after or below the signature;

- b. Pursuant to Ind. Code § 24-5-11-10(c), if a home improvement contract is entered into as a result of damage, loss, or expense that is covered, in whole or in part, by the proceeds of an insurance policy, or damage, loss, or expense for which a third party is liable, the following conditions and requirements apply to the home improvement contract:
 - i. The description, completion dates, and statement of contingencies must be prepared for the proposed home improvements to the extent that the damage, loss, or expense is reasonably known by the Defendant;
 - ii. The requirement that a reasonably detailed description be included in the contract may be satisfied with a statement that the subject real estate will be repaired or restored to the same condition in which the real estate existed before the damage, loss, or expense occurred, or to a comparable condition;
 - iii. The starting and completion dates may be expressed in terms of the number of days elapsed from the date when sufficient approval of the insurance carrier terms allowing for adequate repair or restoration is obtained;

- iv. The consumer may agree to a contract price expressed in terms of the consumer's liability for payment after the application of insurance proceeds or payments from a liable third party; and
- v. The consumer may elect, in writing, to authorize the commencement of work on the home before the consumer receives complete specifications. However, a consumer who elects to authorize the commencement of work under this subdivision is obligated for the home improvements specified and agreed to by the insurance carrier;
- c. in the course of entering into home improvement transactions, failing to state any modifications to the home improvement contract in a writing signed by the consumer, as required by Ind. Code § 24-5-11-10(d), prior to enforcing the contract against the consumer;
- d. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;
- e. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;

- f. in the course of entering into home improvement transactions, before the consumer signs the home improvement contract and before the consumer can be required to make a down payment, the Defendant shall agree unequivocally by written signature to all of the terms of the home improvement contract, as required by Ind. Code § 24-5-11-11;
- g. the Defendant shall give a fully executed copy of the home improvement contract, showing the dates the Defendant and each consumer executed the contract, to the consumer immediately after the consumer signs it, as required by Ind. Code § 24-5-11-12;
- h. the Defendant, in soliciting and/or contracting with consumers, shall refrain from conducting any business activity in the State of Indiana unless those activities are in full compliance with the Home Improvement Contracts Act, Ind. Code § 24-5-11-1, *et seq.*;
- i. representing, either orally or in writing, the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or should reasonably know it does not have;
- j. representing, either orally or in writing, the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not, and the Defendant knows or reasonably should know it is not;

- k. representing, either orally or in writing, that a specific price advantage exists as to such subject of a consumer transaction, if it does not and if the Defendant knows or should reasonably know that it does not;
- l. representing, either orally or in writing, that such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the Defendant knows or should reasonably know that the representation is false;
- m. representing, either orally or in writing, the Defendant is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the Defendant knows or should reasonably know it could not. If no time period has been stated by the Respondent, there is a presumption the Defendant has represented it will deliver or complete the subject of the consumer transaction within a reasonable period of time;
- n. representing the replacement or repair constituting the subject of a consumer transaction can be made by the Defendant for the estimate the Defendant gives a customer for the replacement or repair, if the specified work is completed and: (A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate; (B) the Defendant did not obtain written permission from the customer to authorize the Defendant to

complete the work even if the cost would exceed the amounts specified in clause (A); (C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750.00); and (D) the Defendant knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A);

- o. soliciting or engaging in a home improvement transaction without a license or permit required by law; and
- p. engaging in activity that is not in full compliance with the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1, *et seq.*

5. Pursuant to Ind. Code § 24-5-0.5-4(d), the Defendant cancels and waives any outstanding balance due on it's contracts, entered on or about the following dates, with the following Consumers:

- a. 05/24/06 Bessie S. Green of Indianapolis, Indiana;
- b. 06/20/06 Mamie Cager of Indianapolis, Indiana;
- c. 06/27/06 Robert and Ada Sparkman of Indianapolis, Indiana; and
- d. 07/11/06 S.T. and Erma Smith of Indianapolis, Indiana.

6. Pursuant to Ind. Code § 24-5-0.5-4(c)(2), the Defendant shall pay consumer restitution on behalf of Bessie S. Green of Indianapolis, Indiana, in the total amount of Eleven Thousand One Hundred and Ninety-Two Dollars (\$11,192.00), payable to the Office of the Attorney General.

IN WITNESS WHEREOF, the parties have executed this Consent Judgment this

14 day of May, 2007.

STEVE CARTER
Indiana Attorney General
Attorney no. 4150-64

By:

Terry Tolliver
Terry Tolliver
Deputy Attorney General
Attorney No. 22556-49

by:

A-ABLE CONSTRUCTION, LLC

Paul G. Butier

PAUL G. BUTIER
Printed Name

MANAGER
Title

Approved:

J. Chris Reininga
J. Chris Reininga
Landman & Beatty
Counsel for the Defendant

ALL OF WHICH IS APPROVED, ORDERED, ADJUDGED AND DECREED

this _____ day of MAY 18 2007, 2007.

Lyndee J. Leeper

Judge, Marion Circuit/Superior Court

Distribution:

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